

## What Comes Next? Implications of the Supreme Court of Pennsylvania's Repeal of the Medical Malpractice Venue Rule

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On August 25, 2022, the Supreme Court of Pennsylvania issued an Order amending Rules 1006, 2130, 2156, and 2179 of the Pennsylvania Rules of Civil Procedure, all of which pertain to venue in civil actions. The court's amendment effectively abolishes the provision governing venue in medical malpractice actions, first put in place nearly two decades ago, which required medical malpractice matters to be brought in the county where the alleged malpractice occurred. With the elimination of the provision, beginning on January 1, 2023, plaintiffs can bring a lawsuit for medical negligence in any Pennsylvania county, regardless of where the actual care was rendered, so long as they can establish that the defendant hospital, healthcare system or other healthcare practice provider "regularly conducts business" in the chosen county. The fact that, today, most medical care is rendered by and through providers who work within large corporate health systems, is key to understanding the potential impact of this rule change.

Rule 2179 has long governed venue as it pertains to corporations and provides that a corporation can be sued, among other places, in any county in Pennsylvania where it "regularly conducts business." Although the rule itself is not new, Pennsylvania trial courts will now be asked to apply that rule to hospitals and other healthcare enterprises. Pennsylvania courts have not had to interpret what "regularly conducting business" means in a healthcare context since 2003 when the now-repealed medical malpractice venue rule was enacted. Since that time, the business of healthcare in the Commonwealth and throughout the country has evolved in ways that raise new questions as to what it means to "conduct business" as a hospital, healthcare system or provider. On one hand, the rise of telemedicine could potentially create unlimited geographic reach when it comes to conducting the business of healthcare. On the other hand, it could be argued that long-standing Pennsylvania case law interpreting what it means to "regularly conduct business" as a corporation should not apply in the same way to the provision of medical care which is inherently local by nature.

While it is impossible to predict the outcomes of future legal challenges, it is reasonably certain that courts will have to wrestle with the complicated and fact-intensive question of where hospitals, healthcare systems or other healthcare practice providers regularly conduct business in the context of an individual malpractice case. Related litigation will undoubtedly further stress our overworked judicial system, especially in Philadelphia which is still working through a backlog of cases caused by the pandemic. Additionally, should judges take a broad view of what it means to regularly conduct business with this rule change, individual providers may, as they were prior to 2003, be required to leave their patients and travel from the hospital or office where they practice to defend lawsuits in far off counties merely because a defendant hospital, healthcare system or other healthcare practice provider is deemed to regularly conduct business in that county.

Hospitals, healthcare systems and other healthcare practice providers now have until 2023 to prepare for an influx of venue-related litigation. To be ready for what comes next in 2023, hospitals, healthcare systems and other healthcare practice providers should work closely with experienced counsel to determine those counties where they truly "regularly conduct business" as well as those where they do not and begin the fact-intensive investigation necessary to oppose efforts by plaintiffs' lawyers to bring medical negligence claims against them in the venues where they do not truly regularly conduct business.

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